



[INSERT DATE]

**PROJECT NUMBER & NAME**

XXXXX

**SITE ADDRESS**

XXXXX

**CITY LIGHT CUSTOMER**

XXXXX

**ENERGY EFFICIENCY DEVELOPER**

XXXXX

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## GLOSSARY OF TERMS

“Adjusted Baseline Energy” represents what the baseline energy use would have been if the project ECMs had never been installed, under the same set of post-retrofit conditions.

“Agreement” means this Power Purchase Agreement.

“Avoided Energy Use” means the reduction in electricity use that occurred in the performance period, relative to what would have occurred if the facility had been equipped and operated as it was in the baseline period, but under performance period conditions. Unless and until City adopts another method of quantification consistent with industry best practices, City will base Avoided Energy Use on a formula in this format:

Avoided Energy Use (or “Energy Savings”) = Adjusted Baseline Energy - Performance Period Energy +/- Non-Routine Adjustments

For New Construction, City will consider the difference between the City of Seattle Energy Code target energy use (C401) and the participant’s actual energy use to be the Avoided Energy Use unless and until City adopts another method of quantification.

“Baseline Data” means the measurements and facts describing facility operations and design during the baseline period. This will include energy use or demand and parameters of facility operation that govern energy use or demand.

“Baseline Model” means the mathematical representation or calculation procedure that is used to predict the energy use in a building or facility (or Adjusted Baseline Energy) had no ECMs been implemented. Models may be based on equations that specifically represent the physical processes, may be the result of statistical analysis of energy-use data, or other techniques City reasonably determines to be appropriate for Project purposes.

“Baseline Model Equation” means the mathematical representation or equation governing the prediction of energy use (or Adjusted Baseline Energy) had no ECMs been implemented at the Site.

“City” means the City of Seattle, a Washington municipal corporation, doing business by and through its Seattle City Light Department (“City Light”).

“Efficiency Energy” means the calculated Avoided Energy Use harvested at the site by the EE Developer. This is an energy efficiency resource. SCL will determine Efficiency Energy based on quantification provided by the M&V Consultant.

“Energy Conservation Measure” “ECM” means any type of energy efficiency or energy conservation project or activity conducted, related to the installation, repair, or replacement of energy-efficient equipment or building systems, implementation of capital projects, operational & maintenance (O&M) improvements, or new means of training or managing users of the space, intended to improve the energy productivity of or generate Efficiency Energy at the Site.

“Energy Efficiency Service Fee” (“EE Service Fee”) means the charges for Efficiency Energy that the City will bill the City Light Customer based on the Avoided Energy Use at the Site.

“Energy Efficiency Developer” (“EE Developer”) means the party who enters this Power Purchase Agreement with the City for the sale of the Efficiency Energy to the City from the Avoided Energy Use at the Site.

“Measurement and Verification Consultant” (“M&V Consultant”) means an independent third-party hired and selected by City that will develop and implement an approach to use data-driven models with meter data and other variables to estimate adjusted baseline energy, which will be used by City Light to determine the Avoided Energy Use and Efficiency Energy at the Site. M&V Consultant will be selected by standard City procurement procedures and is subject to change if and when required by City policy or business needs.

“Measurement and Verification Guidelines” (“M&V Guidelines”) means the guidelines and methodology approved by City. The City intends for M&V Guidelines to follow industry standard practices for whole-building estimates of energy savings and non-routine adjustments, if any are needed.

“Measurement Boundary” means the boundary drawn around whole-building meters and systems to segregate those which are relevant to savings determination from those which are not. All energy uses of equipment or systems within the measurement boundary must be measured or estimated, whether the energy uses are within the boundary or not.

“New Construction” means (1) construction of a new building or structure, (2) an extension or increase in the conditioned floor area or height of a building or structure, or (3) major changes in space use type such as major renovations.

“Non-Routine Adjustments” (“NRA”s) means adjustments to the Baseline Model to account for Non-Routine Events, which occurred during the performance period and that cannot be modeled using the independent variables considered in the Baseline Model.

“Non-Routine Events” (“NRE”s) means changes in building energy use that are not attributable to changes in the independent variables used in the baseline model nor to the ECMs that were installed. In the case of an NRE, the Avoided Energy Use may be adjusted by making Non-Routine Adjustments.

"Participant" is the party who owns the Site, acting either through itself or through an agent with appropriate authority.

"Party" or "Parties" means the City and the EE Developer.

"Performance Period" means the period of time after the EE Developer has implemented initial ECMs at the Site resulting in a reduction of monthly energy consumption at least 10% relative to the baseline model and approval has been provided by City. For New Construction, the performance period begins when the building is 75% occupied and written approval has been provided by City.

"Power Purchase Price" ("PPA Price") means the rate that will be paid by the City to the EE Developer, expressed in cents per kilowatt-hour, for the delivery of Efficiency Energy from the Energy Efficiency Developer to the City at the Site under the terms of this Agreement.

"Power Purchase Payment" ("PPA Payment") means the amount to be paid to the EE Developer for delivered Efficiency Energy under the terms of this Agreement as calculated in Appendix A unless and until City determines another methodology is a better calculation of Avoided Energy based on its reasonable utility judgment and industry best practices.

"Program" means City's Energy Efficiency as a Service Pilot Program. Components of the program include both this Agreement under which the City pays EE Developer for Efficiency Energy generated at the Site, and a separate Participation Agreement between City and Participant under which Participant pays City to receive Efficiency Energy based on the Standard Site Energy Consumption for the Site.

"Project" means the collection of ECMs implemented at the Site by the Energy Efficiency Developer intended to generate Efficiency Energy throughout the Term of Agreement.

"Site" means the actual building location that the Energy Efficiency work will take place. The project boundary shall be the utility account and corresponding meters, which make up at least 90% of the site's electricity consumption. The Site location for this Agreement is [INSERT ADDRESS, LEGAL DESCRIPTION, PARCEL NUMBER OR OTHER SPECIFIC IDENTIFIER OR REFERENCE AND ATTACH THE SITE DETAILS AS EXHIBIT B]

## **TERMS & CONDITIONS**

This Agreement is entered into by and between the Parties to implement the Program a City energy conservation program. The EE Developer is voluntarily participating in the City's Program to sell verified Efficiency Energy to the City under the terms and conditions of this Agreement. This Program aims to mitigate the split incentive through this Power Purchase Agreement for the City to purchase the Efficiency Energy delivered through the Project from the EE Developer and through a Participation Agreement to bill the City Light Customer for the Efficiency Energy generated at the Site.

SCL implementation of this Program requires both execution and implementation of this Power Purchase Agreement with the Energy Efficiency Developer at the Site and execution and implementation of a separate Participation Agreement between SCL and Participant by which Participant consents to be billed an Energy Efficiency Service Fee based on the Efficiency Energy generated at the Site. For avoidance of doubt, the Participant is not a party to this Agreement and the EE Developer is not a party to the Participation

Agreement. Efficiency Energy will be determined by City based on information provided by the M&V Consultant, operating under a contract with the City and subject to the City's approval.

In consideration for EE Developer's participation and full performance in the Program, both parties agree to the following:

1. **Term of Agreement.** This Agreement shall become effective on the date execution of signatures by both parties and shall remain in effect until 01/22/2040 unless terminated earlier by the terms of this Agreement. The execution date must be prior to ECM equipment being ordered for projects intending to use existing building baseline methodology. Projects using new construction baseline methodology must have an execution date prior to 50% completion/construction of project.
2. **Entire Agreement.** This Agreement shall incorporate, as terms and conditions to this agreement only, identified attachments, appendices, and the Program Manual. The Agreement, including the incorporated documents, contains the entire agreement between the Parties and supersedes any and all prior written and/or oral agreements. In the event of any conflict or inconsistency between Program Manual and the Agreement, the Agreement will control.
3. **Voluntary Participation/Assumption of Risk.** The EE Developer is fully aware of the risks and hazards connected with the activities of implementing ECMs, and EE Developer is aware that such activities include the risk of injury and even death. EE Developer hereby elects to participate voluntarily in the Program knowing that the activities may be hazardous to EE Developer's property and person and the property and person of third parties, including the Participant and residents or tenants of the Site. EE Developer will inspect the Site before conducting any work and will only implement the ECMs on the Site if EE Developer determines that the Site is suitable for the ECMs to be implemented. EE Developer voluntarily assumes full responsibility for and waives all claims against City arising from any loss, property damage, or personal injury, including death, which may be sustained by EE Developer, Participant, or third parties, or any loss or damage to property and Site, as a result of being engaged in such activities, to the fullest extent allowed by law.
4. **Payment.** The EE Developer shall deliver Efficiency Energy to the City in exchange for PPA payment at the PPA Price as identified in Appendix A.
  - a. **Contingencies.** City payment to EE Developer is contingent on continued Participant consent to participate in the Program. City is under no obligation to pay EE Developer unless and until City receives an executed Participation Agreement from Participant for the Project. If for any reason, the Participation Agreement for the Project and Site terminates, this Agreement will terminate thirty (30) days' written notice from City to the EE Developer, after which City will stop purchasing Efficiency Energy at the Site without further obligation or liability to either Party. Additionally, if the City determines in its sole discretion it is no longer practical to purchase Efficiency Energy at the Site, City may, with thirty (30) days' written notice, terminate this Agreement, after which the City will stop purchasing Efficiency Energy at the Site without further obligation or liability to either Party.
  - b. **Payment Amount.** Determination of the amount of Efficiency Energy, and thus PPA Payment, will remain the sole discretion of the City. City will use the services of the M&V Consultant, or other provider reasonably determined by City to provide the same level of relevant expertise to develop and implement a Baseline Model for the Site and to determine the Avoided Energy Use and Efficiency Energy each payment cycle. As this is a pilot, program evaluations may be conducted that recommend a change in the methodology used to calculate Avoided Energy Use and may be subject to change to align with industry best practice. For each billable kilowatt-hour of Efficiency Energy measured by the M&V Consultant and confirmed by City, the City shall pay the EE Developer the PPA Payment Amount as calculated in Appendix A for each billing cycle. If the Avoided Energy Use

calculated for a billing cycle is zero or less than zero, this will result in no Efficiency Energy payment for that cycle or debit for the EE Developer. The EE Developer will only receive PPA payments for Efficiency Energy generated within the Measurement Boundary. The equations that govern the Baseline Model will be provided to the EE Developer in writing by the City or its M&V Consultant and will be used to quantify Avoided Energy Use and Efficiency Energy. The City, using the services of the M&V Consultant, has sole discretion to modify the Baseline Model as needed to assure verified Efficiency Energy savings at the Site. A record, log, and revision history of this Baseline Model will be maintained by the City to reflect the nature and timing of any permanent Non-Routine Adjustments made throughout the Term of the Agreement; this will be provided to the EE Developer upon request. Non-Routine Events flagged as significant by the City, using the services of the M&V Consultant, will have NRAs made to the Avoided Energy Use calculations.

- c. **Dispute Process.** If the EE Developer believes there is an error in the detailed summary of the Avoided Energy Use provided by the City for a particular billing cycle, then EE Developer shall notify the City of the potential error (including a reasonably detailed description of the nature and effect of the error), within fifteen (15) days after receiving the detailed summary for that billing cycle. Failure to provide notice to the City will waive the EE Developer's ability to dispute that particular PPA Payment. The City will review the Avoided Energy Use calculation and claimed discrepancy and notify the EE Developer whether any adjustments to the Avoided Energy Use are needed. Any payment adjustments made as result of this investigation will be retroactively corrected on subsequent EE Developer payments. If the Parties are unable to resolve the dispute within sixty (60) days after their initial notification, Parties will attempt to resolve the dispute through mediation. If the dispute is not resolved by mediation either applicable Party may proceed to seek any remedy that may be available to that Party at law or in equity (provided that any such remedies shall be limited as provided in this Agreement).
- d. **Taxes.** The EE Developer shall be responsible for payment of any applicable federal, state or local income and corporate tax liability associated with the EE Developer's receipt of the City's PPA Payment for energy efficiency. This Power Purchase Agreement applies to only the EE Developer and the ECMs implemented at the Site. Should the EE Developer wish to enroll additional Sites in the Program, the EE Developer must separately apply for those Sites in accordance with whatever program requirements may be in place at that time. City will evaluate each Program application individually and this Agreement does not guaranty any preference in future City Light program applications.

5. **Adjustments & Process Requirements.**

- a. **Program Requirements & Manual.** EE Developer will implement ECMs at the Site in accordance with all requirements set out in the Program Manual. If City determines, at any time, that the ECMs do not comply with all requirements set out in the Program Manual, City may, in its sole discretion, terminate this Agreement with a thirty (30) day notice or reduce PPA Payments to an amount determined by City to reflect decreased value of energy savings at Site. City will only pay EE Developer for the Efficiency Energy harvested during the billing cycle after City has received and verified the analysis of Efficiency Energy from the M&V Consultant and all requirements in the Program Manual have been fulfilled to the satisfaction of the City.
- b. **Timeline.** Once the Performance Period has begun, the City will pay the EE Developer for delivered Efficiency Energy at the PPA Price as defined in Appendix A. City intends to follow the following steps to determine and provide payment, subject to change, on written notice to EE Developer based on City's reasonable determination of business needs:
  - i. End of Participant billing period.

- ii. City will provide information to M&V Consultant regarding Baseline Energy Use and Avoided Energy Use.
  - iii. M&V Consultant will provide City a detailed summary of Avoided Energy Use based on this information.
  - iv. City will verify the Avoided Energy Use and Efficiency Energy, calculate PPA Price, and make payment to EE Developer.
- c. **Non-Routine Events.** Non-Routine Events are changes in building energy use that are not attributable to changes in the independent variables used in the Baseline Model nor to the ECMs that were installed at the Site. Because these changes are unrelated to the ECMs implemented as part of the Project, they are not to be considered in the quantification of Efficiency Energy, and the Avoided Energy Use may be adjusted by making Non-Routine Adjustments. The EE Developer and Participant will be responsible for reporting potential Non-Routine Events as soon as they arise, or at a minimum, in Quarterly Reports. The EE Developer shall act in good faith to assist the City in investigating possible NREs. City, using M&V Consultant as appropriate, will be responsible for identifying Non-Routine Events (through review of Quarterly Reports and post-retrofit change detection models) and collecting additional data through follow-up phone interviews, observation of unexpected energy use patterns, review of additional project data, periodic site visits, and/or other methods, as appropriate.  
 For existing buildings, City will use standard practice statistical and engineering methods to determine how and when the identified NREs have affected the facility's energy use.  
 If City determines the Project is New Construction (including major renovations), City will use 2015 Seattle Energy Code sections C401.3.2.1, C401.3.8, C401.3.9 and C401.3.10 and Code Official guidance to identify and perform any adjustments to the facility's code baseline EUI.  
 For detailed information on how NREs will be identified and tracked, or for a list of typical Non-Routine Events, please see the Program Manual.
- d. **Non-Routine Adjustments.** Non-Routine Adjustments shall be made to the Baseline Model or Adjusted Baseline Energy to account for Non-Routine Events which have occurred. City, after consulting with the M&V Consultant as appropriate, will apply Non-Routine Adjustments City determines in its sole discretion to be necessary to remove the influence of Non-Routine Events in the Avoided Energy Use calculation and quantification of Efficiency Energy. Until Non-Routine Adjustments are validated and finalized, City will continue to bill the Participant and make PPA Payments to the EE Developer based on the current Baseline Model at the time of billing.  
 Retroactive adjustments shall be made on a subsequent billing cycle. City may update procedures around Non-Routine Adjustments at any time during the Program to reflect new industry best practices.
- e. **Validation.** City retains the right and responsibility to determine Avoided Energy Use and Efficiency Energy at the Site. City will use the M&V Consultant or other appropriate resources in making these determinations. To the extent the M&V Consultant provides energy calculations and modelling related to the Site, City may at its discretion evaluate and validate the M&V Consultant's work including, but not limited to: Avoided Energy Use calculations, Baseline Model, and Non-Routine Adjustments. Should evaluation and validation find that the amount of Efficiency Energy delivered by the EE Developer at the Site requires adjustment, City will direct M&V Consultant to make these adjustments. If these adjustments result in an increase or decrease of Efficiency Energy delivered at the Site, payment adjustments will be reflected in an increase or decrease in subsequent EE Developer payments to reflect the value of Efficiency Energy actually delivered to City.



**6. Site Verification & Data Collection.**

- a. City must be granted permission and access to the Site to perform ECM and Site evaluations for the Program. The City may, at its discretion, perform pre- and post- installation monitoring and visual verification of the implemented ECMs, in order to determine the energy savings, and if necessary, to verify EE Developer's compliance and performance obligations under this Agreement. The EE Developer understands that the scope of any visual verification and review performed by the City does not include any kind of safety, code, or other compliance review or inspection, and is for administrative and verification purposes only. If City and M&V Consultant are unable to access the Site due to failure by EE Developer or Participant to grant permission or otherwise, City will deem the Site no longer practical to generate Efficiency Energy and with a thirty (30) days' written notice to EE Developer, this Agreement will terminate without further liability or obligation to either Party.
- b. EE Developer acknowledges that the City intends to collect and compile certain information, including, but not limited to, building design specifications, submetering data, occupancy data, invoices, ECM descriptions, status for purposes of program evaluation, and data for preparing case studies under this Program.

**7. Energy Efficiency Developer Protocols.** This Agreement is contingent on EE Developer providing verifiable Efficiency Energy to City. Any action taken by EE Developer that City determines was intended to or could mislead an Efficiency Energy purchaser will be a material breach of this Agreement and will subject EE Developer to contract liability and other remedies available at law. Without limitation, EE Developers found to be either: (a) intentionally inflating the incidence of NREs in a manner that would be financially favorable to the EE Developer; or (b) disguising the impact of NREs to resemble expected energy savings will be deemed to have breached this Agreement.

- a. To minimize the possibility of misleading reports of Efficiency Energy:
  - i. EE Developer shall not systematically target, recruit, or enroll Participants who expect to experience a decline in energy consumption due to Non-Routine Events within the coming twelve months; and
  - ii. EE Developer shall not misrepresent the scope of ECMs in such a way as to disguise energy use reduction resulting from Non-Routine changes as Avoided Energy Use attributable to ECMs; and
  - iii. EE Developers shall not install secondary heating sources or power generation fueled by non-metered fuels;
  - iv. EE Developer shall ensure that all reporting related to Efficiency Energy is correct and shall promptly inform City if EE Developer becomes aware that any information provided by EE Developer to City is untrue or could mislead City about the amount of Efficiency Energy Delivered.
- b. While it is anticipated that EE Developers will participate in the pilot in good faith, these requirements will ensure the accurate evaluation of a framework designed to unlock deeper energy efficiency in commercial buildings and help EE Developers overcome the split incentive.
- c. Methodology for Detecting Fraudulent NRE Patterns: if the frequency of NREs which create reductions in Avoided Energy Use cannot be explained by random occurrence within Project (i.e. a pattern of NREs triggers concern), the Project will be examined by the City to assess whether the NREs are statistically indicative. City reserves the right to randomly inspect the Site to verify that ECMs reported by the EE Developer have been installed and properly functioning.
- d. If City is unable to verify Efficiency Energy generation subject to industry best practices and the requirements set out in this section, City may require corrective action(s) from EE Developer.

Corrective action(s) will be determined, at City's sole discretion, to ensure that agreed verifiable Efficiency Energy is delivered to City and may include installation of additional energy efficiency measures. City will provide EE Developer written notice of what correction action is required, the basis for the corrective action, and deadline for completing the corrective action. EE Developer will begin taking corrective action within fifteen (15) days of receiving notice from City. These corrections will be completed by the EE Developer and all expenses will be the sole responsibility of the EE Developer.

- e. If at any time, the City determines the EE Developer has failed to deliver agreed Efficiency Energy or delivered unverified or misleading Efficiency Energy, City may at its sole discretion terminate the PPA with thirty (30) day written notice to the EE Developer and require repayment of City payments for Energy Efficiency claimed by EE Developer, but not verified by City.
8. **On-Site Generation.** EE Developer must provide the City thirty (30) days' written notice before installing any energy generation equipment at the Site, including but not limited to solar panels or geothermal energy equipment. This notice must contain enough information for City to determine how the amount of energy produced on-site may be calculated. City will remove this produced energy from the Site's Avoided Energy Use methodology. City will not pay the EE Developer for this produced energy through the PPA Payment and will not bill the Participant for this produced energy through the EE Service Fee. If City reasonably determines on-site generation will make calculation of the Avoided Energy Use impractical or impossible, City may terminate this Agreement under Section 4(a). Any form of on-site generation at the Site must be City sub-metered under applicable law and City requirements. Installation of on-site generation equipment without prior notice to City will be a material breach of this Agreement. If Participant will be participating in the installation of on-site generation equipment, notice under this section may be provided by either EE Developer or Participant.
9. **Participant Permission Required.** City is not acting as an agent or representative of Participant or EE Developer and is not a party to any agreements between Participant and EE Developer that have been executed or will be executed related to the Site. The City is not an intermediary or agent for the EE Developer or Participant. EE Developers are private businesses not affiliated with the City and are hired at the sole discretion of the Participant. The City makes no recommendations on suitability of any EE Developer and will not defend, favor, or be held responsible for any disputes that arise between Participant and EE Developer. The EE Developer must obtain written permission from the Participant for all work associated with implementation of ECMs and continuing use of the Site for generation of Efficiency Energy. If Participant revokes permission for EE Developer to use the Site at any time, this Power Purchase Agreement will terminate without liability to either Party and City will cease paying EE Developer for Efficiency Energy.
10. **Project Work Selection, Operation and Maintenance.** Proper selection, design, installation, and commissioning of the ECMs or equipment is the sole responsibility of the EE Developer. Neither the City nor any of its departments, subsidiaries, affiliates and officers, directors, employees, agents, representatives or volunteers are responsible for determining whether the design, engineering and installation of the ECMs are proper or compliant with any particular laws, codes, or industry standards. EE Developer is solely responsible for all aspects related to the ECMs, code compliance, and project work at the Site, including but not limited to: selecting the equipment; selecting contractors to perform any Project work; inspecting the Project work and the equipment; ensuring that the equipment is in good working order and condition; ensuring that the equipment is of appropriate manufacture, design specifications, size and capacity, and that the equipment and Project are safely and properly installed and suitable for EE Developer's purposes; and otherwise performing and meeting all Program requirements and applicable laws, regulations and codes. The EE Developer acknowledges and agrees



the City is not a manufacturer of, or regularly engaged in the sale or distribution of, or an expert with regard to, any equipment that the EE Developer selected, purchased, replaced, retrofitted and/or installed under this Program.

11. **Workforce Development.** EE Developers in the Program will need to report data and information regarding workforce and Women and Minority Owned Businesses (WMBE) utilization as specified in the Program Manual.
12. **Public Records Act Compliance.** The City may release documents and records related to this Power Purchase Agreement when the City determines it is required to do so by Washington's Public Records Act, RCW Chapter 42.56, or other disclosure laws. Additionally, as a party contracting with a governmental entity, EE Developer may have obligations under disclosure laws. The EE Developer is responsible for understanding and complying with any applicable disclosure requirements.
13. **Compliance with Laws.** EE Developer represents and warrants that the EE Developer, the EE Developer's agent and employees, or any contractors retained to install or maintain the equipment, are familiar with, and at all times will comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations, Program Manual, Guidelines and other Program policies and requirements including, but not limited to, those pertaining to the implementation of ECMs at the Site. Efficiency Energy harvested at the Site under this Agreement are unique energy savings and cannot be sold twice under any other Agreement.
14. **The City of Seattle Disclaimer.** THE CITY DISCLAIMS, ANY AND ALL IMPLIED OR EXPRESS WARRANTIES, including without limitation, ANY REPRESENTATIONS OR PROMISES WITH RESPECT TO THE ECMs, MATERIALS OR LABOR REQUIRED FOR THE implementation OF THE ECMs ON THE City Light CUSTOMER 'S SITE, OR THE COST OF SUCH equipment, MATERIALS AND LABOR, OR ANY ENERGY SAVINGS THAT MAY ACCRUE FROM THE IMPLEMENTATION OF SUCH ECMs. THE CITY MAKES NO IMPLIED OR EXPRESS WARRANTIES REGARDING THIS PROGRAM, ITS POLICIES, PROCEDURES, ITS ADMINISTRATIVE VERIFICATIONS, AND / OR ANY OWNER INSTALLED equipment, OR equipment INSTALLED BY A CONTRACTOR, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OR MERCHANTABILITY OR FITNESS OF SUCH equipment FOR ANY PARTICULAR PURPOSE. Any required maintenance, repair or replacement of the equipment shall be the sole responsibility of, and at the expense of the EE Developer. THIS DISCLAIMER SHALL SURVIVE ANY CANCELLATION, COMPLETION, TERMINATION OR EXPIRATION OF THE EE DEVELOPER'S PARTICIPATION IN THE PROGRAM.
15. **Indemnity/Limitation of Liability.**
  - a. EE Developer acknowledges and agrees: (i) participation in this Program is voluntary; (ii) that the City is providing payments for Efficiency Energy for conservation purposes only; and (iii) that the City assumes no liability for: EE Developer's decision to enter into this Agreement; EE Developer's decision to implement ECMs at the Site; the ECMs selected by EE Developer; any third parties selected by EE Developers to implement such ECMs; any promises or representations that might be made between EE Developer and the Participant, operator, or occupants; or any disputes arising out of installation, repair or replacement of the equipment installed as part of this Project.
  - b. To the fullest extent allowed by law, EE Developer agrees to release, defend, indemnify, and hold harmless the City, its departments, subsidiaries, affiliates and officers, directors, employees, agents, representatives or volunteers, from any and all claims, losses, harm, costs, liabilities, damages and expenses (including attorney's fees) of any nature whatsoever, or allegations thereof, arising directly or indirectly out of this Agreement, including but not limited to claims related to any method Participant may use to recoup Energy Efficiency Service Fee charges (such as requiring Site tenants to pay all or a portion of those charges), claims brought by the Participant related to this PPA or Participant's Participation Agreement or the PPA, claims related to the acts or omissions of third

parties selected by EE Developer to perform work related to the implementation of this Agreement or at the Site, and claims related to installation, maintenance and repair of ECMs intended to generate Efficiency Energy, except to the extent that any such claims, losses, harm, costs, liabilities, damages and expenses are caused by the City's sole negligence or willful misconduct. EE Developer's indemnity, protection, and hold harmless obligations shall include any demand, claim, assignment, suit or judgment for damages to property or injury to or death of persons, or for any incentive payment by the City, or for any payment made under or in connection with any Workers' Compensation law or under any plan for employees' disability and death benefits. The EE Developer expressly waives by mutual negotiation, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other Workers' Compensation Act, Disability Benefit Act, or other Employee Benefit Act of any jurisdiction, which would otherwise be applicable in the case of such claim.

- c. To the fullest extent allowed by law, the City's liability shall be limited to paying only the approved payments in accordance with this Power Purchasing Agreement. The City, and its departments, affiliates and officers, directors, employees, agents, representatives or volunteers shall maintain no liability to the EE Developer or any other party for any other obligation under the Program. In no event, whether as a result of breach of contract, tort, or any other theory of recovery shall the City be liable in connection with this Power Purchase Agreement or the Program for any or all special, indirect, incidental, penal, punitive or consequential damages of any nature.

**16. Governing Law and Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. Any action at law or in equity to enforce the terms and conditions of this Agreement shall be brought solely in a court in King County Superior Court.

**17. Survivability.** The provisions of Sections 3, 6, 7, 10, 12, 13-16 shall survive the expiration, termination, or completion of the EE Developer's participation in the Program.

**18. Severability.** If any provision of this Power Purchase Agreement, in whole or in part, is deemed invalid by any court or administrative body of competent jurisdiction, then these provisions shall be construed as reformed to the extent necessary to render such provision valid, and the remaining provisions shall remain in effect as reformed. The EE Developer and the City agree that any and all provisions of these Terms and Conditions are severable.

**19. Termination.**

- a. If through any cause the EE Developer fails to comply with the obligations under this Agreement this will result in a breach of contract, and the City shall have the right to terminate this Agreement by giving written notice to the EE Developer of such termination. Unless a shorter written notice period is applicable, upon receipt of written notice, the EE Developer will have sixty (60) calendar days to cure the noncompliance or produce substantial evidence of the EE Developer's efforts to cure. If EE Developer fails to do so, then the City shall terminate this Agreement and cease paying EE Developer for Efficiency Energy. PPA Payments will be paid in full up to the date of the initial breach event and not after. If any PPA payments were made after the initial breach event date, this amount will be owed for full reimbursement to the City from the EE Developer.
- b. If the Site is sold to a new owner who fails to enter a Participation Agreement for the purchase of Avoided Energy at the Site within thirty (30) days of close of sale, this Agreement will terminate without liability to either party and City will cease paying EE Developer for Efficiency Energy.
- c. City's participation in this Agreement is contingent on continuing legislative authorization and appropriation from Seattle City Council. If at any time Seattle City Council fails to provide City with sufficient funds to purchase Efficiency Energy generated at the Site, City may terminate this Agreement without liability or further obligation to EE Developer by providing written notice to EE

Developer within thirty (30) days, after which City will cease paying EE Developer for Efficiency Energy.

- d. In the event that the Agreement is terminated within the first five (5) years from the execution date, the EE developer may be eligible for an energy efficiency incentive from Seattle City Light. This incentive would be earned through current Seattle City Light conservation energy program offerings at the time of termination. Any energy efficiency incentive provided by Seattle City Light standard programs is subject to verification, evaluation, and will exclude efficiency energy already paid for under this Agreement.
  - e. Notwithstanding any other provision of this Agreement, the EE Developer shall have the right at any time to terminate this Agreement in its entirety without cause, if such termination is deemed by the EE Developer, then the City will have sixty (60) calendar days upon receipt of written notice of termination to end this Agreement.
20. **Force Majeure.** If any event or circumstances outside of the Parties control arises which makes it impossible or unlawful for either or both Parties to fulfil their contractual obligations under this Agreement, then this will constitute a termination of Agreement with no liquidated damages.
21. **Assignment.** Neither party may assign its rights and obligations in and under this Agreement without first obtaining prior written consent of the other party.
22. **Amendments.** If either party desires a change in this Power Purchase Agreement an amendment must be requested through written notice. Changes to this Power Purchase Agreement will only be effective if set forth in a document signed by authorized representatives of both the City and the EE Developer.
23. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and creates no rights enforceable by any entity other than City and EE Developer. EE Developer is not the third-party beneficiary of any other agreement entered into by City, including the Participation Agreement with the Participant who owns or operates the Site.
24. **EE Developer as Participant.** EE Developer may be the Participant for this Project. In that case, EE Developer must comply with all terms and conditions of this Agreement and the Participation Agreement in which it is Participant. If at any time, EE Developer breaches the Participation Agreement through failure to pay amounts owed to City or otherwise, that shall also be a material breach of this Agreement.
25. **Construction.** The headings contained in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. Words used in the singular included the plural and words used in the plural include the singular.

**By signing this Agreement, I acknowledge that I have fully read, understand, and agree to be bound by the above Terms and Conditions of this Power Purchase Agreement for participation in the Seattle City Light Energy Efficiency as a Service Pilot Program.**

I certify or declare, under penalty of perjury, under the laws of the State of Washington that I am the Seattle City Light Program Energy Efficiency Developer, or the corporate officer, agent or representative of the business entity listed below, who is authorized to execute and agree to the terms and conditions of this Power Purchase Agreement for participation in the Seattle City Light Energy Efficiency as a Service Pilot Program.

Authorized Signature of Program Energy Efficiency Developer: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Authorized Signer of Energy Efficiency Developer: \_\_\_\_\_

Title: \_\_\_\_\_

City of Seattle, City Light Department:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

## Appendix A. Contract Amounts for PPA

The PPA Payment shall be calculated according to the following:

$$\text{PPA Payment} = \text{PPA Price} \times \text{Efficiency Energy}$$

Whereby,

PPA Price = 0.93 x the average volumetric (\$/kWh) rate(s) of electricity reflected on the participant's bill for the participating site for a specific billing period. This rate shall reflect the sum-total of any electricity-related charges collected volumetrically (\$/kWh) (e.g. electricity, delivery, storage, etc.), divided by the total electricity (kWh) consumed for that billing period to derive a weighted average \$/kWh. The PPA Price shall have the following price floor:

Customer Rate	PPA Price Floor
Medium / Large Customer (City)	\$0.074/kWh
Medium / Large Customer (Downtown Network)	\$0.084/kWh

Efficiency Energy is the calculated Avoided Energy Use harvested at the site by the EE Developer, which is quantified by the M&V Consultant for each billing period.